



## Decision and Reasons for Decision

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<b>Application Number:</b>	<b>310859</b>
<b>Applicant:</b>	<b>Bruce Dulley Family Lawyers</b>
<b>Respondent:</b>	<b>WorkCover Queensland</b>
<b>Decision Date:</b>	<b>26 July 2012</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application for access to documents relating to a WorkCover claim made by the applicant's former employee - access refused to personal, medical and financial information of the WorkCover claimant - whether enhancing an agency's accountability and contributing to the administration of justice for the applicant outweigh the interests in protecting the WorkCover claimant's personal information and privacy - whether access to information may be refused under section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld) on the basis that disclosure would, on balance, be contrary to the public interest</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied to WorkCover Queensland (**WorkCover**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for a complete copy of the WorkCover file relating to a claim lodged by a former employee of the applicant (**claimant**).<sup>1</sup>
2. WorkCover located 950 pages in response to the application and granted the applicant full access to 141 pages and partial access to 74 pages. WorkCover decided to refuse access to the remaining parts of 74 pages and 735 whole pages, on the basis that disclosure would, on balance, be contrary to the public interest. In deciding to refuse access to information on the claim file, WorkCover considered that protecting the claimant's privacy and safeguarding the claimant's personal information carried significant weight in favour of nondisclosure.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of WorkCover's decision.

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<sup>1</sup> The claim was contested by the applicant, accepted by WorkCover (decision dated 10 August 2011 which found that the claimant 'sustained an injury due to a work related event') and later affirmed by Q-COMP (the Workers' Compensation Regulatory Authority). The applicant has lodged an appeal of the Q-COMP decision in the Queensland Industrial Relations Commission (**QIRC**).

4. The applicant submits that it requires access to the WorkCover claim file to assist in its appeal to the Queensland Industrial Relations Commission (**QIRC**). The applicant submits that as a participant in an ongoing legal matter, releasing the information would afford it natural justice and procedural fairness. WorkCover indicated in its decision that the applicant had been provided with access to all information it was entitled to as part of the claim process, including information relevant to rehabilitation and return to work of the claimant and WorkCover's decision-making process.
5. WorkCover's decision to refuse access to information under section 47(3)(b) of the RTI Act is affirmed on the basis that disclosure would, on balance, be contrary to the public interest.

### **Background**

6. Significant procedural steps relating to the application and external review are set out in the Appendix to these reasons.

### **Reviewable decision**

7. The decision under review is WorkCover's decision dated 7 November 2011 refusing access to information under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.

### **Material considered**

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

### **Information in issue**

9. During this review, WorkCover agreed to release 41 full pages and part of one page to the applicant.<sup>2</sup> Accordingly, this information is not considered in these reasons for decision. Part of one further page<sup>3</sup> is also not dealt with in this decision as the applicant did not raise any specific objection<sup>4</sup> to the information being deleted on the basis that it was the personal information of an unrelated WorkCover claimant.
10. In view of the above, 692 full and 75 part pages remain in issue in this review and are subject to this decision (**Information in Issue**). The Information in Issue can be described as:
  - (i) documents and information which relate personally to the claimant (**Personal Documents**);<sup>5</sup> and
  - (ii) documents relating to the claimant provided to WorkCover by an external entity (**External Documents**).<sup>6</sup>
11. The Personal Documents mainly comprise correspondence exchanged between WorkCover, the claimant and various third parties<sup>7</sup> in the course of assessing the

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<sup>2</sup> Pages 256-275 and 280-300, and part of page 279.

<sup>3</sup> Page 72.

<sup>4</sup> In response to OIC's preliminary view dated 15 May 2012.

<sup>5</sup> 71 full pages (pp. 21; 89; 95; 109-113; 115; 116; 119; 120; 204-209; 211-214; 216-220; 223-224; 227; 229-232; 234; 236-255; 276-278; 928; 929; 936-941; 944; 947-950) and 75 part pages (pp. 1; 3-17; 19; 30-32; 35-44; 46; 47; 49; 50; 52-55; 61-65; 67-70; 76; 79-82; 84-87; 91; 93; 96; 97; 99-102; 105-107; 117; 121; 228; 233; 235; 279; 942; 945).

<sup>6</sup> The External Documents comprise 621 pages (pp. 301-921).

<sup>7</sup> For example, the claimant's legal representatives and health practitioners.

claim.<sup>8</sup> Medical reports, invoices and certificates also fall into this category. WorkCover refused access to the following information in these documents:

- personal details of the claimant – for example, Medicare number, home and email address, telephone numbers and contact details for the claimant's partner
- details of the claimant's medical conditions, medications, diagnoses, treatment plans, appointments and assessments
- details of benefit payments to the claimant and related tax details; and
- information relating to other employment of the claimant.

12. The External Documents were provided to WorkCover by an external entity to support a request for information from WorkCover in relation to the claimant. WorkCover explained to OIC that while it did not request the documents, it chose to retain them on the claimant's file to comply with recordkeeping requirements. WorkCover also confirmed that the External Documents were not considered in assessing the claim.

### Relevant law

13. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>9</sup> However, this right is subject to limitations including grounds on which access may be refused.<sup>10</sup> One ground for refusing access is where disclosure would, on balance, be contrary to the public interest.<sup>11</sup>

14. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.<sup>12</sup>

15. The RTI Act list factors which may be relevant to deciding the balance of the public interest<sup>13</sup> and sets out the following steps<sup>14</sup> to decide where the public interest lies in relation to disclosure of information:

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure would, on balance, be contrary to the public interest.

### Findings

16. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest for the reasons set out in paragraphs 17 to 39 below.

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<sup>8</sup> Including file notes of conversations.

<sup>9</sup> Section 23 of the RTI Act.

<sup>10</sup> As set out in section 47 of the RTI Act.

<sup>11</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>12</sup> For example, where disclosure of the information could reasonably be expected to contribute to the administration of justice for a person (schedule 4, part 2, item 17 of the RTI Act).

<sup>13</sup> In schedule 4 of the RTI Act. However, this list is not exhaustive and therefore, factors not listed may be relevant in a particular case.

<sup>14</sup> In section 49(3) of the RTI Act.

### **Irrelevant Factors**

17. I have examined the irrelevant factors in schedule 4, part 1 of the RTI Act and consider that none arise in this case.

### **Factors favouring disclosure**

#### **Accountability**

18. The applicant contends that by refusing it access to the Information in Issue, WorkCover is being provided with '*a certain immunity from scrutiny and hence accountability*'.<sup>15</sup> Specifically, the applicant considers that:
- the financial information which has been released is so deficient that the calculations of amounts it has been ordered to pay '*cannot be checked for accuracy*'<sup>16</sup>
  - it should have access to any information showing WorkCover's deliberations to reach the decision to '*exclude any pre-existing injury from their assessment of the contested claim*';<sup>17</sup> and
  - the intervention of '*another unidentified entity*' in the assessment of the WorkCover claim is concerning and the applicant should be told why the External Documents were not considered.<sup>18</sup>
19. The applicant's above submissions relate generally to the public interest in enhancing government accountability and transparency in decision-making. Under the RTI Act, the public interest will favour disclosure of information where it could reasonably be expected to:
- enhance the government's accountability<sup>19</sup>
  - allow or assist inquiry into possible deficiencies in the conduct of an agency;<sup>20</sup> and
  - reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>21</sup>
20. I acknowledge that disclosing the Information in Issue would allow the applicant to scrutinise the full body of evidence which was available to the WorkCover decision-maker. WorkCover has, however, already provided the applicant with a complete copy of its decision to accept the claim<sup>22</sup> which includes reasons for the decision and a summary of the evidence considered by WorkCover, including relevant medical evidence.
21. WorkCover's reasons for the claim decision state that the claimant's treating doctor considered the claimant's previous back injuries were '*unrelated to [the claim] injury*' and the '*current condition was not an aggravation of a pre-existing condition*'. I am satisfied that the reasons for decision adequately explain the extent to which any evidence of a pre-existing injury was treated by WorkCover in its assessment of the claim and that disclosing any further documents concerning a pre-existing injury would

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<sup>15</sup> Page 2 of applicant's submissions to OIC dated 25 May 2012.

<sup>16</sup> Page 2 of applicant's submissions to OIC dated 25 May 2012.

<sup>17</sup> Page 2 of applicant's submissions to OIC dated 26 June 2012.

<sup>18</sup> Page 4 of applicant's submissions to OIC dated 25 May 2012.

<sup>19</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>20</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>21</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>22</sup> Dated 10 August 2011.

not further the public interest in revealing information that informed WorkCover's decision on this issue.

22. The financial information of particular concern to the applicant appears in a Payment/Recoveries History Report.<sup>23</sup> All information in the report relating to medical, hospital and rehabilitation payments was released. However, only the total amounts of weekly benefits and lump sum payments were disclosed, not the breakdown of these payments. WorkCover stated<sup>24</sup> that claims costs information was released to the applicant as it impacts on an employer's premium but that this consideration does not extend to the breakdown of weekly benefits, paid to the claimant and Australian Taxation Office, as there is a significant privacy interest attaching to this information. Having reviewed the information which was not disclosed, I am satisfied that there is no basis to consider that WorkCover's conduct of the matter (including calculation of payments) was deficient.
23. WorkCover's submissions in relation to the External Documents are set out in paragraph 12 of these reasons. I have considered these, as well as the content of the External Documents and WorkCover's reasons for decision on the claim. In view of the circumstances in which the External Documents were received by WorkCover and the fact that they are not referred to in the claim decision, I am satisfied that the public interest in accountability would not be furthered by disclosing the External Documents.
24. On the basis of the above, I am satisfied that disclosing the Information in Issue would allow the applicant to view all of the evidence which was available to the WorkCover decision-maker and may therefore, increase the applicant's understanding of WorkCover's reasons for decision. However, I do not consider that the public interest in accountability and transparency would be significantly advanced through disclosure given the information which has already been provided to the applicant. I therefore find that these factors carry only moderate weight in favour of disclosure.

### **Administration of justice**

25. The applicant submits that it requires access to all information on the WorkCover claim file to assist in its pursuit of further legal avenues, including the QIRC appeal and any potential related common law claim. The applicant contends that '*knowledge of medical information and treatment*' is crucial to its QIRC appeal and that it is important for it to know '*employment details of the worker especially those which could mitigate a loss*'.<sup>25</sup>
26. The applicant also emphasises that it is seeking any evidence which shows there was a delay in the claimant's return to work program as a result of acts/omissions of WorkCover employees and/or the claimant's treating doctor as it considers this information impacts on the quantum of its financial liability.<sup>26</sup>
27. The RTI Act recognises that where disclosure of information could reasonably be expected to contribute to the administration of justice for a person<sup>27</sup> or generally, including procedural fairness,<sup>28</sup> this will favour disclosure. In view of the applicant's submissions regarding its current and potential future involvement in related legal proceedings, I consider these factors are relevant in this case.

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<sup>23</sup> Pages 33-37.

<sup>24</sup> In its decision dated 7 November 2011.

<sup>25</sup> Page 2 of applicant's submissions to OIC dated 25 May 2012.

<sup>26</sup> Pages 2-3 of applicant's submissions to OIC dated 25 May 2012 and pages 2-3 of applicant's submissions to OIC dated 13 June 2012.

<sup>27</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>28</sup> Schedule 4, part 2, item 16 of the RTI Act.

28. In a QIRC proceeding relating to a Q-COMP appeal, the QIRC may make a directions order about the conduct of a proceeding for example, in relation to disclosure of documents.<sup>29</sup> Given QIRC's broad discretion as to procedure and the rules applicable to QIRC proceedings, I am satisfied that the QIRC has the power to obtain any information it identifies as necessary to examine the issues in the appeal, including any information which may impact the quantum of the applicant's financial liability. For this reason, I consider the public interest in the applicant gaining access to the Information in Issue for the purpose of conducting the QIRC appeal carries only limited weight.
29. In support of its case, the applicant also made extensive submissions in relation to the Information Commissioner's decision in *Willsford and Brisbane City Council (Willsford)*,<sup>30</sup> a decision which considered the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. In *Willsford*, the Information Commissioner found that the administration of justice will favour disclosure if an applicant demonstrates that:
- (i) they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - (ii) they have a reasonable basis for seeking to pursue the remedy; and
  - (iii) disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.<sup>31</sup>
30. The applicant considers that legal remedies are available to it and that it should be given access to the Information in Issue so that its '*rights at law can be pursued and/or evaluated as to whether the remedies available are worth pursuing*'.<sup>32</sup> The applicant has not, however, specified the particular remedies it is considering other than to refer to '*a common law claim*' throughout its submissions in this review.
31. Having considered the circumstances of the applicant's case, I am not satisfied that the principles in *Willsford* apply to support disclosure of the Information in Issue. The applicant has been ordered to make payments to the claimant and has disputed these in Q-COMP and more recently in the QIRC appeal. In my view, a WorkCover order to make payments to an injured employee does not constitute a loss, damage or actionable wrong to the employer, as identified by the Information Commissioner in *Willsford*. Similarly, while there are avenues of appeal available to an employer who contests a decision to accept a claim and/or quantum, I am not satisfied that pursuing an appeal is equivalent to pursuing a remedy for an actionable wrong. For these reasons, I am unable to attribute any weight to the applicant's submissions as they relate to the *Willsford* requirements for establishing the administration of justice factor.
32. On the basis of the above, I am satisfied that disclosing the Information in Issue could not reasonably be expected to assist the applicant in conducting the QIRC appeal, or contribute to the administration of justice generally in relation to any future legal pursuits. I therefore find that the public interest in the administration of justice carries limited weight in favour of disclosure of the Information in Issue.

<sup>29</sup> Rule 41 of the *Industrial Relations (Tribunals) Rules 2011* (Qld). The *Industrial Relations (Tribunals) Rules 2011* (Qld) apply to the QIRC proceeding by virtue of section 553 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (**WCR Act**). Section 553 of the WCR Act also provides that the non-party disclosure provisions in chapter 7, part 2 of the *Uniform Civil Procedure Rules 1999* (Qld) may also be available to a participant in a QIRC appeal. These provisions allow a party to a proceeding to serve a notice on a non-party requiring it to produce a document, in its possession or under its control that is directly relevant to an allegation in the proceeding.

<sup>30</sup> (Unreported, Queensland Information Commissioner, 27 August 1996). The decision in *Willsford* was made under the repealed *Freedom of Information Act 1992* (Qld). The reasoning in *Willsford* was recently affirmed under the RTI Act in *1OS3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

<sup>31</sup> *Willsford* at paragraph 17.

<sup>32</sup> Page 5-6 of applicant's submissions to OIC dated 25 May 2012.

## **Factors favouring nondisclosure**

### **Personal information and privacy**

33. As set out in paragraph 11 of these reasons, the Personal Documents contain information which relates personally to the claimant – for example, medical, and financial information. The External Documents also relate personally to the claimant.<sup>33</sup> I am satisfied that the Information in Issue comprises the claimant's '*personal information*'<sup>34</sup> as it is about, and identifies, the claimant.
34. The RTI Act recognises a public interest in safeguarding another individual's personal information<sup>35</sup> and protecting their privacy.<sup>36</sup> Given the particularly personal and sensitive nature of the Information in Issue, I consider these factors are relevant.
35. I accept that the privacy interest in some of the claimant's personal information is somewhat reduced as it is already known to the applicant through their previous employment relationship.<sup>37</sup> However, I am not satisfied that the privacy interest is reduced to such an extent so as to favour disclosure. As for the personal information not already known to the applicant, for example, medical details, I am satisfied that disclosure would constitute a significant intrusion into the claimant's privacy.
36. I find that the public interest in protecting the claimant's personal information and privacy carries significant weight favouring nondisclosure of the Information in Issue.

### **Disclosure of information prohibited by an Act**

37. In its decision, WorkCover stated that any communication between an injured worker and WorkCover is confidential.<sup>38</sup> This reflects section 573(7) of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (**WCR Act**) which places a general prohibition on WorkCover employees from disclosing information they obtain through their employment.
38. I acknowledge that section 6 of the RTI Act overrides provisions of other legislation prohibiting the disclosure of information. However, where a provision such as section 573(7) of the WCR Act applies to information, it will give rise to a public interest factor favouring nondisclosure.<sup>39</sup> In this case, I consider this factor carries some weight in favour of nondisclosure of the Information in Issue, particularly in relation to the sensitive personal information of the claimant obtained by WorkCover.

## **Conclusion**

39. In balancing the competing public interest factors in this case, I am satisfied that moderate weight can be afforded to the public interest in advancing WorkCover's accountability and providing the applicant with further understanding of the reasons for the claim decision. However, I do not consider that disclosing the Information in Issue could reasonably be expected to contribute to the administration of justice for the

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<sup>33</sup> The extent to which I can describe the specific nature of the External Documents is limited by section 108(3) of the RTI Act which prohibits OIC from disclosing information which is claimed to be contrary to the public interest information.

<sup>34</sup> Section 12 of the *Information Privacy Act 2009* (Qld) defines personal information as '*information or an opinion ... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

<sup>35</sup> Schedule 4, part 4, item 6 of the RTI Act. The RTI Act recognises this factor as favouring nondisclosure because of the public interest harm in disclosure.

<sup>36</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>37</sup> For example, name, residential address, mobile and home telephone number and tax file number.

<sup>38</sup> Page 4 of WorkCover's decision dated 7 November 2011.

<sup>39</sup> Schedule 4, part 3, item 22 of the RTI Act

applicant in its current and/or future legal pursuits and therefore, I attribute only limited weight to this factor in favour of disclosure. Weighing against these factors are the significant interests in safeguarding the claimant's personal information and privacy. There is also some weight to be afforded to the public interest in ensuring information obtained by WorkCover employees under their enabling legislation is not disclosed. On balance, I find that the public interest factors favouring disclosure are outweighed by the factors favouring nondisclosure considered in these reasons for decision.

## **DECISION**

40. I affirm WorkCover's decision to refuse access to the Information in Issue under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
41. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 26 July 2012**



**APPENDIX****Significant procedural steps**

Date	Event
14 October 2011	The applicant applied to WorkCover for access to a complete copy of the claimant's WorkCover claim file.
7 November 2011	WorkCover located 950 pages in response to the application and decided to: <ul style="list-style-type: none"> <li>• release 141 pages in full</li> <li>• grant access to 74 pages in part; and</li> <li>• refuse access to 735 pages in full,</li> </ul> on the basis that disclosure of the information to which it refused access would, on balance, be contrary to the public interest under section 49 of the RTI Act.
1 December 2011	The applicant applied to OIC for an external review of WorkCover's decision.
17 January 2012	WorkCover provided OIC with copies of the 950 pages located in response to the application.
20 February 2012	OIC obtained oral submissions from WorkCover in relation to the External Documents.
24 April 2012	OIC obtained WorkCover's agreement to release some additional information to the applicant.
15 May 2012	OIC conveyed to the applicant a preliminary view that disclosing the Information in Issue would, on balance, be contrary to the public interest, and invited the applicant to provide submissions in response by 30 May 2012.  OIC also confirmed to the applicant that WorkCover had agreed to release a further 39 full pages and part of one page.
25 May 2012	The applicant provided submissions to OIC contesting the preliminary view and raising concerns about external review processes.
6 June 2012	OIC responded to the applicant's procedural concerns in writing.
13 June 2012	The applicant provided further submissions to OIC in support of its contention that disclosure of the Information in Issue would be in the public interest. The applicant also raised further concerns about procedure.
20 June 2012	OIC obtained WorkCover's agreement to release a further two full pages to the applicant.
26 June 2012	The applicant provided further submissions to OIC in support of its contention that disclosure of the Information in Issue would be in the public interest and also raised concerns about WorkCover's file maintenance, recordkeeping systems and format of released documents.
3 July 2012	OIC responded to the applicant's procedural concerns in writing.